

REMARKS

Claim Rejections Under 35 U.S.C. § 103

Claims 1-16 are presently pending. Claims 11-16 are new. Claims 1 and 6 are the independent claims. The present invention is directed to the problem of providing a thermochemical pack that does not require an insulating layer and that minimizes water loss from within the pack.

In the Office Action dated January 24, 2006, the Examiner rejected claims 1-10 under 35 U.S.C. 103(a) as being unpatentable over Kithara et al. (US 5,261,241) in view of Maro et al. (U.S. 5,491,018) and further in view of Helmeg (U.S. Patent No. 6,648,909). Kithara et al. relates to a refrigerant device and, in Example 11, refers to an aluminum laminated film. Maro et al. is directed toward a packaging material. Helmeg relates to thermal therapy devices such as hot and cold packs.

Applicants contend that a *prima facie* showing of obviousness cannot be made because there is no motivation to combine Kithara et al. with Maro et al. Kitara et al. is directed to the problem of providing a chemical cooling device that is capable of providing a long cooling time at relatively high atmospheric temperature and is resistant to melting during storage at relatively high atmospheric temperature. (Kitara et al., col. 2, ll. 4-30). Maro et al. is directed to the problem of providing a food storage container having a thin silicon oxide layer to provide oxygen and water vapor barrier properties for food storage while also maintaining container transparency and adhesion between a printed layer and silicon oxide layer. (Maro et al. col. 3, ll. 31-56). Kitara et al. and Maro et al. thus address different problems and provide no motivation to combine.

In his office action of July 29, 2005, the Examiner stated that the combination of Kitara et al. and Maro et al. "is clearly motivated by their shared desire to limit liquid seepage/leakage and/or evaporation via the use of particular coatings." (7/29/2005 Office Action, p. 6). As is discussed above, this is not the correct identification of the problems addressed by Kitara et al. and Maro et al.

Further, in his office action of January 24, 2006, the Examiner cited *Ruiz v. A.B. Chance Co.*, 357 F. 3d 1270 (Fed. Cir. 2004) as support for this basis for a motivation to combine stating "motivation to combine prior art references may exist in the nature of the problem to be solved." (1/24/2006 Office Action, p. 6). In *Ruiz*, however, the patents being combined addressed the

same problem: "underpinning existing structural foundations." *Ruiz*, 357 F.3d at 1276. In this case, Kitara et al. and Maro et al. address very different problems: one related to a cooling device and one relating to food storage. *Ruiz*, therefore, does not support the Examiner's conclusions. If anything, *Ruiz* instructs that where different problems are addressed, as in the present case, there is no motivation to combine. As a result, because there is no motivation to combine Kitara et al. and Maro et al. a *prima facie* showing of obviousness cannot be made and the 103 rejection should be withdrawn.


New claims 11-16 have also been added to require a physical activator for initiating a chemical reaction. Support for the amendments can be found on pages 5 and 6 of the specification and in applicant's U.S. patent application Serial No. 10/821,694, which was incorporated by reference. The present specification discloses that thermochemical compositions can be activated using a physical activator, or "trigger," in the art. Flexing of the physical activator initiates crystallization and the subsequent exothermic effect. None of the references cited by the examiner, however, disclose a physical activator. As a result, the cited references neither anticipate nor render obvious the pending claims.

CONCLUSION

In light of the above amendments and remarks, Applicant submits that the remaining pending claims, claims 1-16 are in condition for allowance. If any questions arise or issues remain, the Examiner is invited to contact the undersigned at the number listed below in order to expedite the disposition of this application.

Respectfully submitted,

BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, ILLINOIS 60610
(312) 321-4274



Timothy P. Lucier
Registration No. 44,882
Attorney for Applicant